

Sabka Vishwas (Legacy Dispute Resolution) Scheme, 2019

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Overview of the scheme

- **Dispute resolution cum Amnesty Scheme introduced for the settlement of legacy cases.**
- **Scheme to be applicable for**
 - **Central Excise,**
 - **Service Tax, and**
 - **Specified cesses and taxes such as Salt Cess, Sugar Cess, Agricultural Produce Cess, duty under M&TP Act, etc.**

Overview of the scheme

- Scheme will not be applicable in matters relating to:
 - Customs duty and allied levies
 - NCCD levied on excise duty under Finance Act, 2001
- Scheme is effective from 01.09.2019 till 31.12.2019

Overview of the scheme

- **Benefits under the Scheme:**

- **Relief from payment of tax dues to the extent of 40% to 70% of the tax dues depending on the amount of tax dues involved and the stage at which matter is pending**
- **No relief from tax dues available in case of voluntary disclosure by declarant**
- **Relief from interest, penalty and prosecution**

Relief from Tax Dues under the Scheme

Details	Amount	Relief
A. <u>Tax dues</u> relatable to SCN or appeal arising out of such SCN which is pending as on 30.06.2019 and the <u>amount of duty</u> is	< 50 lakhs	70% of Tax dues
	> 50 lakhs	50% of Tax dues
B. Tax dues relatable to SCN for <u>late fee or penalty only</u> and the <u>amount of duty</u> has been paid or is nil	-	Entire amount of late fee or penalty
C. Tax Dues are relatable to <u>amount in arrears*</u> or Tax Dues are relatable to <u>amount in arrears*</u> and the declarant has indicated an amount of duty as payable but not paid it and the amount of duty involved is	< 50 lakhs	60% of Tax dues
	> 50 lakhs	40% of Tax dues

Relief from Tax Dues under the Scheme

Details	Amount	Relief
D. Tax dues are linked to an <u>enquiry, investigation*</u> or audit against the declarant and the amount quantified on or before 30 th June	< 50 lakhs	70% of Tax dues
	> 50 lakhs	50% of Tax dues
E. Tax dues are on account of voluntary disclosure by the declarant	-	No relief

Definitions

Amount in Arrears (Section 120(c))

The amount of duty which is recoverable as arrears of duty under the indirect tax enactment, on account of—

- **No appeal having been filed by the declarant against an order or an order in appeal before expiry of the period of time for filing appeal; or**
- **An order in appeal relating to the declarant attaining finality; or**
- **The declarant having filed a return under the indirect tax enactment on or before the 30th day of June, 2019, wherein he has admitted a tax liability but not paid it**

Eligibility and Exclusions

All persons shall be eligible to make a declaration under this scheme except

- **Where appeal filed before the appellate forum AND final hearing has taken place on or before 30.06.2019**
- **Who have been convicted for any offence under any provision for the matter for which he intends to file a declaration**
- **Where SCN has been issued AND final hearing has taken place on or before 30.06.2019**
- **Who have been issued a show cause notice for an erroneous refund or refund**

Eligibility and Exclusions

All persons shall be eligible to make a declaration under this scheme except

- **Who have been subjected to any enquiry or investigation or audit AND amount of duty involved has not been quantified on or before 30.06.2019**
- **A person making a voluntary disclosure**
 - **after being subjected to any enquiry or investigation or audit**
 - **having filed a return wherein he has indicated an amount of duty as payable, but has not paid it**
- **who have filed an application in the Settlement Commission**
- **seeking to make declarations with respect to excisable goods set forth in the Fourth Schedule to the Central Excise Act, 1944**

Voluntary Disclosure under Scheme

Voluntary Disclosure: Benefit of scheme not available wherein the voluntary disclosure is made:

- After being subject to enquiry, investigation or audit where amount is not quantified; or
- After filing of return, where amount of duty indicated as payable but not paid

Procedure

- Designated Committee may either accept the amount specified in the declaration or enhance the said amount, after providing opportunity to be heard to declarant.
- Payment to be made by the declarant within 30 days of issuance of statement of DC.
- Any appeal or reference or reply to SCN filed before the appellate forum (other than SC/HC) shall be deemed to have been withdrawn.

Procedure

- In case of writ petition, appeal or reference pending before SC/HC, declarant shall file an application to SC/HC for withdrawal.
- Designated Committee shall issue discharge certificate on payment of the amount and on proof of withdrawal of appeal, where applicable.

Effect of Discharge Certificate

Discharge Certificate issued shall be conclusive as to matter and time period stated therein and

- **Declarant shall not be liable to pay any further duty, interest and penalty w.r.t. the matter and time period covered in the declaration.**
- **Declarant shall not be liable to be prosecuted w.r.t. matter and time period covered in the declaration.**

Effect of Discharge Certificate

- **Matter and time period covered by declaration shall not be reopened in any other proceeding.**
- **Not to preclude issuance of SCN for same matter for subsequent period, different matter for same period and in case of voluntary disclosure information furnished is found to be false.**

Restrictions under Scheme

- Entire payment is in cash and Input tax credit (ITC) cannot be used to make payment.
- Amount paid under Scheme will not be eligible as ITC to any other person.
- Though pre-deposit, if made, is deducted while computing the amount payable under the scheme, where the amount of pre-deposit exceeds the amount payable under the under the scheme, declarant is not entitled for refund of differential amount.

Issues for Discussion



Issues for discussion

- Whether the scheme is discriminatory against dutiful and honest tax payers and therefore can be challenged as being unconstitutional for violating Article 14 of the Constitution?
- Whether the scheme is discriminatory to the extent it denies benefit to the certain class of assessee viz; Appeal filed after 30.06.2019, final hearing before 30.06.2019 etc.?

Issues for discussion

- All India Federation of Tax Practitioners v. Union of India reported at 1998 (104) E.L.T. 595 (Del.) - Kar Vivad Samadhan Scheme, 1998
 - All the assesseees litigating and in arrears belong to one class.
 - No sub-classification can be made in the class of litigating assesseees in arrears merely by reference to the fact whether they are prosecuting the litigation or defending themselves.
 - Once a liability to pay the tax was incurred and determined on or before 31-3-1998 (appointed day) the assessee would be treated to be in arrears in spite of his having succeeded at one stage of litigation if the Revenue has chosen to continue with litigation and benefit of the scheme, would be available to him.

Issues for discussion

- Definition of 'Tax arrears' in Clause (m) of Section 87 of Finance (No. 2) Act, 1998 to be read as to mean the amount of tax, penalty or interest determined by any competent authority on or before 31-3-1998 though such determination might have been set aside at a later stage if such setting aside has not been accepted by the Department and continues to remain under challenge before a Court or Tribunal.

Issues for discussion

- Declaration rejected by Designated committee or amount estimated by designated committee not acceptable to the assessee – whether assessee can file writ petition challenging the same?
- **Assessee to fulfill his part of the obligation - Kaptan's Enterprises and another v. Union of India - AIR 1986 Delhi 221**

“...An importer, when in doubt, can seek clarification regarding the department's interpretation on any particular topic. It is also open to the importer, without seeking such interpretation or when he does not accept the interpretation put by the department in any matter, to approach the courts in the exercise of their writ jurisdiction and seek an authoritative ruling but this he must do expeditiously and in such a way as to ensure that at least interim, if not final, directions are obtained from the court, sufficiently in time to safeguard against the possibility of one or more the conditions of import becoming impossible of fulfilment due to delay in this regard. The Court cannot help a petitioner who does not do this and approaches the court after letting one of the conditions go unfulfilled.”

Issues for discussion

- Automobile cess levied under IRDA Act - Whether benefit of the scheme can be availed?
- Show cause notice is issued for merely interest liability or only for fine - Whether benefit can be availed under this scheme? (Assuming tax liability is not disputed)
- Whether Pre-Deposit or any other payments made during investigation, would be deducted out of the total tax dues and then 30% / 50% is to be computed OR pre-deposit is to be deducted after arriving at the 30% / 50% amount required to be paid?

Issues for discussion

- Scheme not available where appeal filed before the appellate forum (or SCN issued) and final hearing has taken place on or before 30.06.2019 - What is the meaning of 'Final Hearing'?
- Revisionary Authorities not covered under the definition of 'Appellate Forum' - Whether revision applications pending before the Joint Secretary (RA) are covered under the scope of the Scheme?
 - Rebate/refund matters excluded under section 125(1)(d)

Issues for discussion

- Where the period of filing of appeal expires after 30.06.2019 and appeal is not filed by the assessee, whether the tax payable will be considered as 'amount in arrears'?
- Provisional assessment, order passed and remanded back – what will be amount in arrears?
- Appeal filed after 30.06.2019 (within time limit) and later withdrawn – whether can be construed as not filed and scheme be opted?

Issues for discussion

- Matter pending in High Court where revenue is in appeal – Assessee wants to settle under scheme – whether such cases covered under the scheme? If yes, who will withdraw the appeal?
- Department conducted audit before 30.06.2019 and demand quantified before 30.06.2019. SCN issued after 30.06.2019 – whether benefit of the scheme can be availed?
- Section 125(1)(d) – Declaration cannot be filed in respect of SCN demand tax for an erroneous refund – whether benefit of the scheme towards interest can be availed if assessee agrees to pay tax amount fully?

Issues for discussion

- Appeal with condonation of delay filed before 30.06.2019 – condonation of delay application pending as on 30.06.2019 – whether declaration can be filed?
 - Ms. Mina Fusade v. Shibaiji Dash, Commissioner of Income Tax and others [2006] 285 ITR 229 (Bom)
 - Shyam Sundar Sharma v. Pannalal Jaiswal And Others – [2005] 1 SCC 436
 - Sheodan Singh v. Daryao Kumar – AIR 1966 SC 1332
 - Pasupuleti Venkateswarlu v. Motor & General Traders AIR 1975 SC 1409 and Variety Emporium v. R.M. Mohd. Ibrahim Naina AIR 1985 SC 207 - Subsequent events taking place during the pendency of the litigation can very well be taken into consideration and the Court is competent to mould the relief accordingly.

Voluntary Disclosure under Scheme

- Order passed before 30.06.2019 and application for rectification of mistake (ROM) filed before 30.06.2019 – ROM pending as on 30.06.2019 – whether declaration can be filed?
- Contradiction between Section 121(c)(iii) and Section 125(f)(ii)
Those who filed return on or before 30.06.2019 admitting tax liability and not paid dues – not eligible for voluntary disclosure. Whether benefit of the scheme can be availed as amount in arrears?
- Date by which dues should have paid is not specified – whether should be read not paid on or before 30.06.2019 or before filing declaration?

Voluntary Disclosure under Scheme

- Order passed – appeal filed against part demand (say 60%) and remaining demand (40%) is not disputed – whether sixty percent of demand can be treated as “Tax due” and 40% of demand can be treated as “Amount in arrears”? If yes, whether the online application system would support this?
- Scope of the term “enquiry or investigation” – whether notice for mismatch of turnover as per Income tax returns and service tax returns will be covered?

Issues for discussion

- SCN or appeal relates to multiple issues – whether declaration can be filed for selected issues?
- 3 SCNs disposed of by the Commissioner (Appeals) by a common order and the matter is in appeal before the Tribunal as on 30.6.2019 - whether demand in respect of one of the SCN covered under the common order can be offered for resolution under the scheme?
- During department audit various issues are identified and quantification is done for each issue separately – whether declaration can be filed for selected issues and other issues can be contested?

Issues for discussion

- Can the benefit of Scheme be availed by the co-noticees if main noticee does not opt to avail the Scheme?

Circular No. 1071/4/2019-CX.8 dated 27.8.2019 - para 10(i)

...In case of a show cause notice demanding duty/tax from main taxpayer and proposing penal action against co-noticees, it is clarified that the co-noticees cannot avail the benefits of the scheme till such duty demand is not settled. Once the main-noticee discharges the duty demand, the co-noticees can apply under this scheme.

Issues for discussion

- In terms of Section 125 (1)(g), declaration cannot be filed an application in the settlement commission for settlement of a case - Whether co-noticees can avail benefit of the scheme whether main noticee has settled before the settlement commission?

Circular No. 1071/4/2019-CX.8 dated 27.8.2019 - para 10(i)

...Once the main-noticee discharges the duty demand, the co-noticees can apply under this scheme. This will also cover cases where the main noticee has settled the matter before the Settlement Commission and paid the dues and in which co-noticees were not a party to the proceedings before the Settlement commission.

Issues for discussion

- Where the main noticee has opted for the scheme – whether co-noticees should separately apply or whether co-noticee automatically becomes declarant?

Proceedings against Co-noticees will abate where main notice has filed declaration –

- Anil K. Arora and Ravi K. Arora vs. CCE, Mumbai {2000 (118) ELT 346 (Tri.)}
- Gaurang Mehta vs. CC, Customs {2000 (122) ELT 853 (Tri.)}

Thank You!